# SINGAPORE REPORTS.

## DEPUTY PUBLIC PROSECUTOR v. SALAMAT Bin MANGON.

**[App. Crim. Juris. (Murray-Aynsley, C.J.) Oct. 17, 1946]**

*Minor Offences Ordinance (Cap. 24) Section 26 (1) — Offensive weapon — Vegetable knife — Circumstances of the case to be taken into consideration in determining whether a weapon is offensive or not.*

The respondent was charged with carrying an offensive weapon, namely a knife. He pleaded guilty and was fined $30/- or 1 month's rigorous imprisonment in default. The learned District Judge in his grounds of judgment said "He was carrying an ordinary vegetable knife which was a tool of his trade". It appeared that the respondent was found with the knife concealed on his person at 12.10 a.m. in Geylang Serai, where there had recently been an affray between Malays and Dutch soldiers and civilians. The Public Prosecutor appealed on the ground that the sentence was inadequate.

Held, (1) that whether a weapon is offensive or not is a question of fact depending on the circumstances of each particular case and that there was evidence in this case that the respondent was carrying an offensive weapon;

(2) that in the circumstances of the case, the penalty imposed was inadequate.

*Cases referred to :—*

(1) *In the case of George Cosans* (1785) 1 Leach 342 (footnote); 168 E.R. 274.

(2) *Sarban Singh v. P. P.* (1941) 10 M.L.J. 210.

(3) *Rex v. James Johnson* (1822) Russ. & Ry. 493, 168 E.R. 914.

*A. W. Bellamy* for the Appellant.

Respondent in person.

**Murray-Aynsley, C.J.**:—In this case the respondent was charged with carrying an offensive weapon, namely, a knife. He pleaded guilty and was fined $30 or 1 month r.i. in default.

The Public Prosecutor appealed on the ground that the sentence was inadequate. In his grounds of judgment the learned District Judge said "He was carrying an ordinary vegetable knife which was a tool of his trade". This gave rise to the question as to whether an offence had been committed. The meaning of the words "offensive weapon" occurs in several Acts of Parliament as well as in local legislation and they give rise to difficulties in interpretation. There may be said to be two schools of thought. One school regards merely the primary purpose of the weapon used and, if that is not offensive, holds that it is not within the section. In this sense are the case of *George Cosans*[1] and the recent F.M.S. case of *Sarban Singh*[2]. On the other hand in the case of *James Johnson*[3], where the accused had used what appeared to be a common walking stick, the Judge directed the jury that if the accused had used his stick by way of attack for the purpose of effecting a robbery it might be considered as an offensive weapon. In my opinion this is the correct view. Whether a weapon is offensive or not is a question of fact depending on the circumstances of each particular case. Many things such as razors, parangs and pick handles have their legitimate and pacific uses but circumstances may show that that was not the use which the accused had in mind at the material time. For instance, where a man is found prowling round at night with a razor concealed in his sock or a parang about his person.

In this case the respondent was found with a knife at 12.10 a.m. in the neighbourhood of an affray. In the circumstances I consider that there was evidence that the respondent was carrying an offensive weapon and I consider further that the penalty imposed was inadequate, and I therefore passed the increased sentence of fine of $150 or 6 months r.i.

*Sentence Increased.*

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## REX v. YEO KIM WATT AND ANOTHER.

**[Reference to Court of Criminal Appeal (Willan, C.J., Malayan Union, Laville and Pretheroe, JJ.) Oct. 28, 1946]**

*Penal Code, Section 34 — Common Intention — Robbery when armed with deadly weapon — One member of a gang found guilty of committing robbery while armed with deadly weapon and so liable to conviction under Section 397 of the Penal Code — Whether Section 34 of the Penal Code can be invoked to support charge against every member of the gang, whether armed or not, under Section 397 of the Penal Code.*

In this case the two accused were charged jointly under Sections 392 and 397 of the Penal Code. The evidence showed that in the commission of the robbery, the first accused was not armed, but that the second accused was armed. At the conclusion of the case for the prosecution the trial judge amended the charge and directed that both accused be charged under Section 392 of the Penal Code and the second accused only be charged under Section 397 of the Penal Code. He held that Section 34 of the Penal Code had no application to

Section 397 of that Code. The jury found the accused guilty. The accused were each sentenced to five years rigorous imprisonment and the second accused only to a whipping of six strokes with a rotan as an additional punishment under Section 397 of the Penal Code. The trial judge then stated a case for the decision of the Court of Criminal Appeal as to whether he was correct in his view that section 34 of the Penal Code had no application to Section 397 of that Code.

**Held,** that since Section 392 or Section 393 of the Penal Code, read together with Section 397 of that Code creates separate and distinct offences, there is no reason why Section 34 of that Code should not apply to those offences to the same extent as it applies to other offences.

*Case referred to:—*

(1) *Emperor Ali Mirza* (1923) 51 Cal. 265.

Case stated for the decision of the Court of Criminal Appeal under Section 319 of the Criminal Procedure Code and Section 22 of the Court of Criminal Appeal Ordinance.

*A. W. Bellamy* (Crown Counsel) for the Public Prosecutor.

*D. Marshall* for the 1st accused.

The judgment of the Court of Criminal Appeal was delivered by:—

**Willan, C.J.**:—In Singapore Assize Case No. 25 of 1946 the two accused (1) Yeo Kim Watt and (2) Tan Yew Ling, were charged jointly under sections 392 and 397 of the Penal Code. On the finding of the jury that in the commission of the robbery the first accused was not armed, but that the second accused was armed, with a deadly weapon to wit, a pistol, the trial Judge (Worley J.) convicted both the accused of the offence of robbery. He sentenced each of them to five years rigorous imprisonment, and the second accused only, because he was armed with a pistol, to a whipping of six strokes with a rotan as an additional punishment under section 397 of the Penal Code. The first accused was not sentenced to any additional punishment under section 397 of the Penal Code, because the trial Judge was of the opinion that section 34 of the Penal Code does not apply to section 397 of that Code.

The trial Judge then stated a case for the decision of the Court of Criminal Appeal as to whether he is correct in his view that section 34 of the Penal Code has no application to section 397 of that Code. The case stated by the trial Judge is as follows:—

> At the second Singapore Assizes for 1946 held at the Supreme Court, Singapore, before me and a common jury on the 6th, 9th and 10th days of September, 1946, one Yeo Kim Watt and one Tan Yew Ling were charged jointly at the instance of the Attorney General as follows:—
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> 'That you (1) Yeo Kim Watt and (2) Tan Yew Ling on or about the 18th day of May, 1946, at Singapore in company with one other did commit robbery of cash, jewellery and cloth to the value of $2,308/- the property of one Chong Shun Yeo and others and at the time of committing the said robbery deadly weapons were used, to wit, two pistols and that you thereby committed an offence punishable under sections 392 and 397 of the Penal Code (Chapter 20)'.
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> Both accused claimed trial. Mr. Bellamy, Crown Counsel, appeared for the Public Prosecutor, and Mr. Marshall for the first accused. Second accused was not represented by counsel.
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> 2. At the hearing of the said charge, the evidence led for the prosecution alleged that the said two accused with another person unknown and not in custody, at about 11.30 a.m. on the day alleged entered house No. 36, Lorong 14, Geylang Road, Singapore, and there robbed the inmates of moveable property valued approximately at $2,308/-,
> and that at the time of committing the said robbery the second accused and the third person not in custody each used a deadly weapon to wit, a pistol, by pointing the said pistols at two of the inmates and thereby caused them fear of instant death or hurt with intent to compel them to hand over keys,
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> and that the first accused did not himself carry or use any deadly weapon, but was present at the time and place when the second accused and the third person not in custody used deadly weapons as aforesaid,
> and that the first accused thereafter wrongfully restrained the inmates of the house by confining them in a latrine in order to the committing of the robbery.
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> 3. At the conclusion of the case for the prosecution, I, being of the opinion that there was no evidence that the first accused used a deadly weapon and that section 34 of the Penal Code has no application to section 397 of that Code, amended the charge and directed that both accused be charged again as follows:—
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> 'That you (1) Teo Kim Watt and (2) Tan Yew Ling on or about the 18th day of May, 1946, at 36 Lorong 14 Geylang Road, Singapore, in company with one other person unknown did commit robbery of cash, jewellery and cloth to the value of $2,308/- the property of Chong Shun Yee and Lim Nyuk Chow and that you thereby committed an offence punishable under section 392 of the Penal Code (Chapter 20) and that you, Tan Yew Ling, at the time of committing the said robbery used a deadly weapon to wit, a pistol, and thereby rendered yourself liable to punishment under section 397 of the Penal Code'.
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> To this charge both accused claimed trial and I called on them for their defence.
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> 4. Both accused set up the defence of an alibi but were convicted by the unanimous verdict of the jury, who recommended them to mercy on account of their youth and poverty. The jury found as a fact that the second accused used a deadly weapon to wit, a pistol, at the time of committing the robbery.
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> 5. I sentenced each accused to five years R.I. and the second accused to six strokes of the rotan as additional punishment under section 397 of the Penal Code. But for the recommendation of the jury I should have imposed on both accused a longer term of imprisonment.
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> The question for the opinion of this Court is whether the determination set out in paragraph 3

above was correct in point of law and what should be done in the premises.

Shortly the question referred to this Court for a decision is as follows :—

If one member of a gang is guilty of committing, or attempting to commit, robbery in any one of the aggravating circumstances set out in section 397 of the Penal Code, can the provisions of section 34 of that Code be invoked to support a charge against every member of the gang under the first mentioned section?

As almost all the authorities cited by counsel when arguing the case before us were decisions of Indian Courts, it is necessary in the first place to decide whether the provisions now contained in our Penal Code and in the Indian Penal Code have the same effect.

Originally, subject to the substitution of the expression "gang-robbery" for "dacoity" and to the addition of a provision relating to whipping, the provisions of sections 397 and 398 of the Penal Code of this Colony were identical with the sections having the same numbers in the Indian Penal Code. As far as this Court is aware, these provisions in the Indian Penal Code have not been amended and are still in the same form as at the time when the relevant judgments were delivered, but by Ordinance No. 12 of 1938 an entirely new section 397 was substituted in our Penal Code and at the same time section 398 was repealed. It is clear, therefore, that, although the Indian authorities cited would have a high argumentative value if this amendment had not been made, their value as authorities in respect of the present section of our Code depends on the nature and extent of the amendment made in the year 1938. It is necessary in the first place therefore to consider the decisions of the Indian Courts on this subject and to ascertain the precise grounds on which they were based.

Until comparatively recent times the various Courts in India were in direct conflict regarding the correct answer to the question which has been referred to this Court, but it now appears to have become settled law in all Indian Courts that the provisions of section 34 of the Indian Penal Code cannot rightly be invoked to render a person convicted under sections 392 or 393 liable to the penalties prescribed by sections 397 or 398. Perusal of the numerous reported cases shows that the decisions are based on two grounds viz :—

(a) "Neither section 397 nor section 398 creates an offence. The effect of these sections is merely to limit the minimum of punishment which may be awarded if certain facts are proved". (Page J. in *Emperor v. Ali Mirza*[1]); and

(b) In both sections it is specifically provided that "the offender" shall be liable to the penalties prescribed by the sections and, being a penal statute, this provision must be construed strictly.

Now it is abundantly clear that the substituted section 397 in our Penal Code does not "merely limit the minimum punishment which may be awarded if certain facts are proved" because no minimum punishment of any kind is in fact prescribed. To this extent therefore the reason advanced by Page J. does not apply to our Code. The main ground he set out in support of his decision, however, was that sections 397 and 398 of the Indian Penal Code do not create offences. It is unnecessary to consider whether we are in agreement or not with this decision in so far as the two sections of the Indian Penal Code are concerned, but it is necessary to consider whether section 397 of our Penal Code creates a separate offence or whether it merely prescribes a punishment for an offence already defined in the Code. In other words, is the commission of the offence of robbery in any of the aggravated circumstances set out in that section an offence distinct from robbery which is punishable under section 392 or attempted robbery which is punishable under section 393 of the Penal Code?

Turning to other sections of the Penal Code for guidance, it is clear that committing theft in any of the aggravating circumstances set out in section 382 is an offence entirely different from theft under section 379, and voluntarily causing hurt by the weapons or the means set out in section 324 is not the same offence as is punishable under section 323 for voluntarily causing hurt. There are a number of other instances in the Code where the commission of an offence in specified aggravating circumstances is made an offence quite separate and distinct from the commission of the offence in the absence of such circumstances. Thus comparable provisions in other parts of the Penal Code indicate that in fact a new offence was created when the new section 397 was substituted for the original section, because section 397, when read with section 392 or section 393, creates offences which are aggravated forms of the offences of robbery and of attempted robbery.

Counsel pointed out that since section 397 refers to "the offender . . . . . such offender" whereas section

394 refers to "any person . . . . . such persons", the introduction of the word "offender" in the former section must be assumed to be intentional, and that the object could only have been to limit the application of the section to the robber or robbers who actually committed the aggravated offence. This was one of the grounds on which the decisions of the Indian Courts were based.

As to this, we would first point out that there is no need to have recourse to section 34 when considering section 394 because under that section the guilty act of the robber who causes hurt in committing the robbery is imputed to all the others who are jointly concerned in the commission of the robbery, and it would not avail any one of the others to say that he had nothing to do with the causing of such hurt. We might add that a similar liability attaches itself to each member of the gang under section 396 when one of such members commits murder during the actual gang robbery.

In the second place, if counsel's submission is correct, the anomalous situation arises that whereas, by virtue of the specific provision contained in section 394, if any person in committing or attempting to commit robbery voluntarily causes "hurt", such person "and every other person jointly concerned in committing or attempting to commit such robbery" become liable to an increased penalty, but if in the same circumstances the hurt caused was "grievous hurt" only the actual assailant is liable to be charged, and thus become liable to the increased penalty, under section 397.

An example of such an anomaly would be the case of three persons, each armed with a stick, jointly committing robbery by day and in such robbery causing hurt by blows struck with such sticks. For committing the robbery and causing hurt they would all be liable to imprisonment and a whipping under section 394. If, however, one of the blows had been struck with slightly greater force and grievous hurt caused — say the complainant's little finger had been broken — then, according to the Indian decisions, only the robber who had caused that particular grievous hurt would be liable to the additional punishment of whipping under section 397.

To take the anomalies further. If in a robbery one of the persons is armed with a knife and causes hurt in the commission of such robbery, all the robbers are liable to imprisonment and a whipping under section 394; if the robber with the knife goes further and causes grievous hurt, he only is liable to be whipped under section 397; and lastly, if there are at least five persons committing such robbery and the one armed with the knife causes death in committing what has now become gang-robbery, then all are liable to be punished with death, or imprisonment together with a whipping, under section 396.

We cannot think that the legislature intended such anomalies, because in cases such as we have instanced it only takes one person armed with a knife or a gun to overawe the inhabitants of the premises to be robbed, whilst the other members of the gang proceed with the actual robbing.

If, without in any way straining the generally accepted rules of interpretation, another construction is possible which would avoid creating these anomalies, that construction should be adopted. In our view this is possible for the following reasons:—

(a) Comparison of the language of section 397 with that of section 394 is of no assistance as to whether section 34 applies to section 397 because the provisions of section 394 are sufficient in themselves to deal with all the persons committing robbery with hurt without recourse to section 34.

(b) By section 9 of the Penal Code it is provided that words in the singular include the plural and therefore the word "offender" in section 397 can be interpreted as including more than one person.

(c) Section 397, when read with section 392 or section 393, creates separate and distinct offences from the offences prescribed by the two last mentioned sections to the same extent that the offence of theft in any of the aggravating circumstances set out in section 382 is an offence different from theft under section 379 and just as voluntarily causing hurt by the weapon or the means set out in section 324 is not the same offence as that which is punishable under section 323 for voluntarily causing hurt.

(d) That since section 392 or section 393, read together with section 397, creates separate and distinct offences, there is no reason why section 34 should not apply to those offences to the same extent as it applies to other offences.

With regard to the reference, therefore, this Court decides that the provisions of section 34 of the Penal Code are applicable to section 397 of that Code in respect of the offences defined when that section is used conjointly with section 392 or section 393.

*Reference answered accordingly.*